



REPUBLIC OF KENYA



KENYA LAW

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Mwangangi & 10 others v Commissioner of Lands & 3 others (Civil Application 21 of 2020) [2020] KESC 7 (KLR) (9 October 2020) (Ruling)

Sammy Mwangangi & 10 others v Commissioner of Lands & 3 others [2020] eKLR

Neutral citation: [2020] KESC 7 (KLR)

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

CIVIL APPLICATION 21 OF 2020

PM MWILU, DCJ & V-P, MK IBRAHIM, SC WANJALA, NS NDUNGU & I LENAOLA, SCJJ

OCTOBER 9, 2020

BETWEEN

SAMMY MWANGANGI 1ST APPLICANT
MUSYOKA ILIMA 2ND APPLICANT
JOSEPH KARANJA 3RD APPLICANT
PAUL KIMENYE 4TH APPLICANT
BEN MUNYWOKI 5TH APPLICANT
JOSEPH MUTHIANI 6TH APPLICANT
KYULE MWIMBI 7TH APPLICANT
FRANCIS MUSAI 8TH APPLICANT
MICHAEL NDAKA 9TH APPLICANT
PHILIP MAINGI 10TH APPLICANT
NZULA MUEMA 11TH APPLICANT

AND

COMMISSIONER OF LANDS 1ST RESPONDENT
JAMES GAMAU WAINAINA 2ND RESPONDENT
RAPHAEL MUGAI MWANGI 3RD RESPONDENT
PAUL KAHUTU KONDIA 4TH RESPONDENT

(Being an application to seek enlargement of time to file an application for review of the Ruling of the Court of Appeal at Nairobi (W. Ouko (P), M. Warsame & F. Sichale, JJA) dated 10th July



2020 seeking certification to appeal to the Supreme Court against the Judgment of the Court of Appeal at Nairobi (A. Visram, W. Karanja & M. Koome, JJA) dated 9th February 2018)

Factors to consider when exercising judicial discretion to extend time for filing an application for review to the Supreme Court

The application sought enlargement of time to file an application for review of the ruling of the Court of Appeal. The court highlighted factors to consider when exercising judicial discretion to extend time for filing an application for review to the Supreme Court.

Reported by Kakai Toili

Civil Practice and Procedure – extension of time – application for extension of time within which to file an application for review to the Supreme Court – factors to consider when exercising judicial discretion to extend the time for filing the application - whether issues raised in an intended application for review could be determined in an application for enlargement of time to file the intended application - Supreme Court Act, 2012, section 26 and 53.

Brief facts

The applicants filed the instant application seeking enlargement of time to file an application for review of the ruling of the Court of Appeal. The applicants contended that the delay in filing the application for review to the instant court was inadvertent, and was occasioned by delay in the assessment of filing fees and uploading of documents on the court's e-filing portal. The 3rd and 4th respondents in opposing the application submitted that no purpose would be served by the extension as the matter they sought to pursue was not a matter of general public importance, but was one seeking to enforce private rights.

Issues

- i. What were the factors to be considered when exercising judicial discretion to enlarge the time for filing an application for review to the Supreme Court?
- ii. Whether issues raised in an intended application for review could be determined in an application for enlargement of time to file the intended application.

Held

1. Grant or refusal of extension of time was a matter of judicial discretion to be exercised, not subjectively or at whim or by rigid rule of thumb, but in a principled manner in accordance with reason and justice. The applicants had explained, cogently and reasonably, that the delay in filing their application for review of the Court of Appeal's decision denying them timeous access to the court was not of their own making. The delay of six days was in any event not inordinate and there was no prejudice caused to the respondents, especially the 3rd and 4th respondents.
2. The question whether the applicants had established that the issues in contest were of general public importance was a matter that could not be determined in the instant application, it being the gravamen of the intended review application under article 163(5) of the Constitution.
3. Prayer 3 of the motion under consideration seeking orders that the originating motion dated July 22, 2020 under Reference No.SC APP;/E007/2020 be deemed as dully filed was not one for granting in the instant instance. It was best that a proper motion for review under the Constitution, the Supreme Court Act and Rules, be filed pursuant to the orders granted.

Application allowed; each party to bear its costs of the application.

Orders

- i. *The time within which to file the application for review of the ruling of the Court of Appeal dated July 10, 2020 was enlarged and the same was to be filed within 7 days of the ruling.*
- ii. *Directions were to be taken before the Deputy Registrar thereafter.*



Citations

Statutes

None referred to

Advocates

None mentioned

RULING

1. Upon perusing the Notice of Motion by the Applicants dated 11th August 2020 and filed on 14th August 2020, which application is brought pursuant to the provisions of Section 26 and 53 of the Supreme Court Act, 2012, and in which the Applicants seeks enlargement of time to file an application for review of the ruling of the Court of Appeal (W. Ouko (P), M. Warsame & F. Sichale, JJA) in Civil Application SUPP No. 9 of 2018 (UR 6/2018) dated 10th July 2020; and
2. Upon perusing the supporting affidavit of Sammy Mwangangi deposed to on 11th August 2020 as well as the 3rd & 4th Respondents' Replying Affidavit deposed to on 27th August 2020 and filed on even date; and
3. Upon considering the written submissions on record for the Applicants wherein they contend that the delay in filing the application for review to this Court was inadvertent, and was occasioned by delay in the assessment of filing fees and uploading of documents on this Court's e-filing portal; and

Noting that the 3rd & 4th Respondents in opposing the application submit that no purpose will be served by the extension as the matter they seek to pursue before this Court is not a matter of general public importance as alleged by the Applicants, but is one seeking to enforce private rights; and

4. Having considered the application, the replying affidavit and the submissions filed by the respective parties, by a unanimous decision of this Bench, we find that;
 - (a) This Court's jurisprudence on extension of time was settled in *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral & Boundaries Commission & 7 others* SC (App) No. 16 of 2014; (2014) eKLR. In that matter, we stated inter alia that grant or refusal of extension of time is a matter of judicial discretion to be exercised, not subjectively or at whim or by rigid rule of thumb, but in a principled manner in accordance with reason and justice.
 - (b) The Applicants have explained, cogently and reasonably, that the delay in filing their application for review of the Court of Appeal's decision denying them timely access to this Court was not of their own making. We thus accept that explanation.
 - (c) The delay of six (6) days is in any event not inordinate and we see no prejudice caused to the Respondents, especially the 3rd and 4th Respondents, who have strenuously opposed the application.
 - (d) The question whether the Applicants have established that the issues in contest are of general public importance as enunciated in *Hermanus Phillipus Steyn v Giovanni Gneccchi-Ruscione* SC Application No. 4 of 2012; [2013] eKLR is a matter that cannot be determined now, it being the gravamen of the intended review application under Article 163(5) of the Constitution.
 - (e) Prayer 3 of the Motion under consideration seeking orders that "the Originating Motion dated 22nd July 2020 under Reference No. SC APP; E007/2020 be deemed as duly (sic) filed" is not one for granting in the present instance. It is best that a proper motion for review under



the Constitution, the Supreme Court Act and Rules be filed pursuant to the orders granted herebelow.

5. In the circumstances, we now make orders as follows;
 - (a) The time within which to file the application for review of the Ruling of the Court of Appeal (W. Ouko (P), M. Warsame & F. Sichale, JJA) dated 10th July 2020 is hereby enlarged and the same to be filed within 7 days of this Ruling.
 - (b) Directions to be taken before the Deputy Registrar thereafter.
 - (c) Each party shall bear its costs of the Application.
6. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF OCTOBER, 2020

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P. M. MWILU

DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT

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M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT

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S. C. WANJALA

JUSTICE OF THE SUPREME COURT

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NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

Registrar,

Supreme Court of Kenya

